



National Labor Relations Board

Weekly Summary of NLRB Cases

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CASES SUMMARIZED
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Allstate Power Vac, Inc.	Brooklyn, NY	2
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Allstate Power Vac, Inc. (29-CA-28264, et al.; 354 NLRB No. 111) Brooklyn, NY, Nov. 30, 2009. The Board adopted the judge's dismissal of the allegation that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire and consider for hire seven overt salt Union applicants. With respect to the refusal-to-hire allegation, the Board found that the General Counsel had failed to establish his initial *FES* burden of showing that the overt salts had the relevant training or experience required for positions that were open at the Respondent, and that the General Counsel had further failed to establish that the Respondent was hiring for field technician positions for which the overt salts would have had the relevant training or experience. As to the refusal-to-consider allegation, the Board concluded that, regardless of their Union affiliation, the Respondent would not have considered the seven overt salts for hire because there was insufficient evidence that the Respondent was hiring for positions other than those that required a commercial driver's license/HAZMAT endorsements, which the overt salts did not possess. The Board also found that the General Counsel had failed to show that the Respondent excluded the overt salts from a "hiring process" for field technician positions. [\[HTML\]](#) [\[PDF\]](#)

In addition, the Board adopted the following of the judge's findings in the absence of exceptions: the dismissal of the allegation that the Respondent violated Section 8(a)(1) by threatening that employees would lose bonuses and raises if they supported the Union; the finding that the Respondent violated Section 8(a)(1) by prohibiting employees from wearing Union stickers/insignia; and the finding that Respondent violated Section 8(a)(3) and (1) by unlawfully discharging/laying off four employees on or around June 4, 2007.

Finally, the Board severed and remanded back to the judge 8(a)(3) and (1) allegations involving the subjection to more onerous working conditions, discharges, and suspensions for further analysis consistent with the *Wright Line* framework.

(Chairman Liebman and Member Schaumber participated.)

Laborers Local 1184 (Ames Construction) (21-CD-00674; 354 NLRB No. 113) Imperial County, CA, Nov. 30, 2009. The Board found that there was reasonable cause to believe that Section 8(b)(4)(D) of the Act had been violated, there were competing claims to the work in dispute, and there was no agreed-upon method for the voluntary adjustment of the dispute. The Board rejected Teamsters' claim that the case was a dispute about the preservation of bargaining unit work not within the scope of Section 10(k). The Board found that Teamsters' performance of disputed work during a single project, which lasted about a year, for an employer who had only recently begun work in California, was insufficient to establish a work preservation claim. The Board awarded the work in dispute to employees represented by Laborers based on, the factors of employer preference, employer current assignment, and economy and efficiency of operations. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Liebman and Member Schaumber participated.)

**UNPUBLISHED BOARD DECISION AND ORDER
IN REPRESENTATION CASE**

*(In the following case, the Board adopted the Report of the
Regional Director or Hearing Officer in the absence of exceptions)*

DECISION AND CERTIFICATION OF REPRESENTATIVE

Family Health Network, Inc., Chicago, IL, 13-RC-21844, Dec. 4, 2009.

DECISIONS OF ADMINISTRATIVE LAW JUDGES

El Paso Disposal, L.P. (Operating Engineers Local 351) El Paso, TX Dec. 2, 2009.
28-CA-22252, et al.; JD(SF)-45-09, Judge William G. Kocol.

The Southern New England Telephone Co. (Communication Workers Local 1298)
New Haven, CT Dec. 2, 2009. 34-CA-12131, 3-CA-26851 (formerly), et al.; JD-59-09,
Judge Wallace Nations.
